

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2644-CR

Cir. Ct. No. 2004CF124

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GRAHAM L. STOWE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
KENDALL M. KELLEY, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Graham Stowe appeals an order denying his petition for conditional release from his WIS. STAT. § 971.17¹ commitment. Stowe

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

argues the circuit court erroneously determined he posed a significant risk of bodily harm to himself or others if conditionally released. We reject Stowe's argument and affirm.²

BACKGROUND

¶2 In August 2005, Stowe was committed to institutional care after he was found not guilty by reason of mental disease or defect of bail jumping, four counts of false imprisonment, first-degree reckless endangerment and felony intimidation of a victim. Stowe was committed for thirty-nine years and six months, but was granted conditional release in June 2007. He was revoked in July 2009 based on numerous rule violations. Stowe is appealing his third denial of a release petition since his revocation.

¶3 In 2004, Stowe broke into the home of Amanda B., his former girlfriend, with plans to kidnap her and then kill himself in front of her. While in the home, Stowe tied up Amanda's brother and father, then doused the father with gasoline and beat him. The captives were able to escape only after Stowe overdosed on medications and passed out.

¶4 Following Stowe's conditional release, he had an angry confrontation regarding overnight arrangements for his child, allegedly spray-painted an obscene phrase near a different ex-girlfriend's workplace, and was later warned by police after calling that woman more than thirty times in one night. Stowe also failed to attend multiple drug and alcohol counseling appointments.

² After this decision was drafted, Stowe escaped from the Mendota Mental Health Institute. Stowe's escape provides independent grounds to affirm in our discretion. See *State v. Bono*, 103 Wis. 2d 64, 309 N.W.2d 400 (Ct. App. 1981).

Stowe claimed he did not need the treatment and blamed his counselor for canceling and rescheduling appointments. Stowe was eventually revoked after he entered the bar where Amanda was working, remained for forty-five minutes, drank two beers, and questioned employees about her. Stowe's conditions of release had forbade him from having unsupervised contact with Amanda, entering any establishment whose sole purpose was to serve alcohol, or consuming alcohol.

¶5 A hearing on Stowe's most recent petition for conditional release was held in May 2012. The State's psychologist, Dr. James Armentrout, testified Stowe suffered from two conditions. Stowe exhibited polysubstance abuse that was in forced remission within a controlled environment. He also had a personality disorder, with antisocial and narcissistic traits. Armentrout explained this disorder was "a pervasive and persistent pattern of personality traits that either cause the individual significant emotional distress or else interfere significantly in major areas of life, whether that be occupational functioning or interpersonal functioning" Further, Armentrout explained personality disorders are "at most, minimally treatable by any type of mental health treatment." Ultimately, Armentrout offered the following tentative endorsement of Stowe's petition:

For the last several times I have seen Mr. Stowe, I have, I would say, waxed and waned in my opinion regarding his suitability for release. ...

[M]y concern is that I believe he continues to be a rather headstrong, self-righteous person who feels entitled to a certain degree of consideration that is greater than other people. I think he exaggerates his own situation. ... If he were released, I'm sure he is capable of conforming to rules and avoiding misconduct as he has been doing at Mendota.

The question is whether or not he will be willing to do that, keeping in mind the violations of—that occurred reportedly during his last conditional release, and the fact that within the hospital setting, he is buffered from many of the

irritations, provocations, frustrations, that most of us encounter in day-to-day living.

....

So on that basis, I offer, if I might, some type of conditional endorsement of release, but of course, I can't specify those conditions, but I see no significant benefit to be gained by continuing his inpatient treatment, because again, I think he will continue to behave as he has and he's quite capable of doing so.

¶6 Stowe offered the testimony of Dr. Kent Berney, who like Armentrout, was appointed to evaluate Stowe regarding the conditional release petition. Berney agreed with Armentrout's diagnoses and that personality disorders are not treatable by medication or inpatient treatment. Berney opined that Stowe had "reached maximum benefit from inpatient care at this time," and opined Stowe did not present a substantial risk of danger. The court denied the conditional release petition at the close of the hearing, and Stowe now appeals.

DISCUSSION

¶7 Petitions for conditional release are governed by WIS. STAT. § 971.17(4)(d), which provides:

The court, without a jury, shall hear the petition The court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself ... or to others ... if conditionally released.

In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself ..., what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(Formatting altered.) We view the evidence in the light most favorable to the circuit court’s determination. See *State v. Randall*, 222 Wis. 2d 53, 60, 586 N.W.2d 318 (Ct. App. 1998). We will affirm that determination if there is any credible evidence, or reasonable inferences from that evidence, upon which the court could have based its decision. *Id.*; see also *State v. Brown*, 2005 WI 29, ¶¶5, 10, 40, 42, 279 Wis. 2d 102, 693 N.W.2d 715 (addressing similarly phrased statute).

¶8 Stowe generally asserts that the “circuit court’s findings in this matter were clearly erroneous[,]” and then addresses what he claims were the “five primary factors” on which the court improperly focused. We reject each complaint in turn.

¶9 First, Stowe claims the court improperly focused on the fact he would have faced significant prison time if criminally convicted of the “horrific” offenses underlying his mental commitment. We are not convinced in the first instance that the court’s opening comments were directed at its determination of whether to grant or deny Stowe’s petition. Rather, as the court explained, it first wished to address its observation that Stowe believed he was being treated unfairly. The court commenced its discussion stating: “I’d like to begin at the beginning here somewhat, because one of the things that has become obvious here is sort of an expectation or even a perception generally that this is somehow an unfair process and that it’s unfair that he doesn’t have his freedom” Thus, it is apparent the court’s subsequent comments regarding what sentence could have resulted were directed at Stowe’s perception of unfairness, rather than an intent to convert Stowe’s commitment into a punitive sanction.

¶10 Indeed, we observe Stowe continues to present himself as a victim. For instance, he asserts Dr. Armentrout, “had, at all previous times, found some way to indicate that ... Stowe should not be considered for conditional release.”³ Similarly, he asserts “the circuit court has found a way to deny each” petition for conditional release. These dismissive comments do not further Stowe’s position. He also repeatedly argues it is inappropriate to continue detaining him in a mental health facility when there is no meaningful treatment available to him. That assertion, however, ignores the *only* relevant question—whether Stowe presents a significant risk of harm if released.

¶11 In any event, we discern nothing improper about the circuit court’s acknowledgment that Stowe faced a significant prison term. The circuit court explicitly tied that observation to the “horrific” conduct underlying Stowe’s commitment and to his past and current mental health—all of which are proper factors enumerated in WIS. STAT. § 971.17(4)(d).

¶12 Stowe’s second criticism is that the circuit court emphasized he was not permitted to leave the mental health facility unescorted. We fail to see how this was improper. The court determined Stowe’s recent conduct in a controlled setting was not necessarily representative of his behavior should he be released. This concern was supported by Stowe’s behavior following his first release, as well as by Dr. Armentrout’s concerns that Stowe may not react well to the ordinary stressors of life due to his personality disorder. Stowe further asserts, “if the mental defect no longer exists, the ‘significant risk’ subsides.” This

³ This assertion is also inaccurate. Doctor Armentrout had recommended conditional release in 2007.

declaration is confounding. Stowe cites no evidence that his mental defects have been resolved, and the circuit court found “there is nothing here to suggest that the mental illness for which he’s been diagnosed, the personality disorder, that it has somehow disappeared or subsided, there’s nothing to suggest that’s the case”

¶13 Stowe next argues the court improperly focused on his past conduct. This argument improperly relies on an unpublished decision and is inadequately developed.⁴ We may reject it on that basis. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). Further, the record belies Stowe’s representation that his “index crime and his mental history are the only factors that led to the Court’s decision.” The circuit court expressed concerns regarding the index crime; the crimes committed during Stowe’s only previous release; the continuing existence of his mental health disorder, which Dr. Armentrout was uncertain Stowe would manage out in the community; and the stark contrast between the relative freedom Stowe enjoys at Mendota compared to the much more expansive freedom he would have on release.

¶14 Stowe next argues the court improperly considered his score on the PCLR. Further, he contends the court should have accepted the opinions of Dr. Berney, who favored a different test. Stowe cites no authority supporting an argument that the circuit could not consider the PCLR test or should have given greater weight to another test. Indeed, despite the fact the PCLR had not been administered to Stowe recently, Berney acknowledged the PCLR was generally

⁴ Stowe cites an unpublished decision of this court released in November 2008, despite quoting the rule that prohibits such citation. *See* WIS. STAT. RULE 809.23(3). We therefore sanction Stowe’s counsel pursuant to WIS. STAT. RULE 809.83(2), and direct counsel to pay a \$50 penalty to the clerk of this court within thirty days of this decision.

considered a valid predictor. Stowe's score on the PCLR indicated a "high risk for recidivism for a violent crime The score suggests that he is not responsive to treatment, has significant impulsivity and mood variability, and is likely to be significantly limited in his insight and highly exploitive of others." We discern nothing improper with the court's consideration of the PCLR test results, or with the court's rejection of Berney's conditional release recommendation, which rejection was based in part on Berney's failure to utilize the PCLR. *See Brown*, 279 Wis. 2d 102, ¶¶40, 88-89 ("credibility of the witnesses and the weight of the evidence are for the circuit court"; circuit court may accept or reject expert testimony).

¶15 Stowe's fifth and final argument is that the court gave improper weight to an affidavit Stowe prepared just months prior to the hearing, alleging Dr. Armentrout was untrustworthy and should be removed. The circuit court viewed the contents of the affidavit as unsubstantiated and indicative of Stowe's symptoms of victimization and paranoia and inability to properly react to authority figures and stressors. Stowe ignores these findings and fails to address the contents of the affidavit. Therefore, his argument is insufficiently developed and need not be addressed further. *See Flynn*, 190 Wis. 2d at 39 n.2; *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (failure to refute circuit court's ruling constitutes a concession of its validity). In any event, the court's findings with respect to the affidavit support its determination that Stowe remained a significant risk because he would be unable to control his behavior due to his mental defect.

¶16 Stowe has neither demonstrated that the court considered any improper factors, nor developed any argument that the evidence did not support the court’s finding.⁵ Further, he essentially acknowledges there was a proper basis for the circuit court’s determination, stating in his reply brief that the court’s “reasons are arguable.” Accordingly, we reject Stowe’s arguments.

¶17 Attorney sanctioned.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁵ We disregard Stowe’s one-page argument that he presented clear and convincing evidence that he would not pose a significant risk of harm upon release. The argument is undeveloped and it lacks citation to the record or legal authority. See *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

